



David B. Cohen  
Mayor

## CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development  
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Public Hearing Date:	October 14, 2008
Land Use Action Date:	December 16, 2008
Board of Aldermen Action Date:	January 5, 2009
90-Day Expiration Date:	January 12, 2009

DATE: October 10, 2008

TO: Board of Aldermen

FROM: Michael Kruse, Director of Planning and Development  
Candace Havens, Chief Planner   
Alexandra Ananth, Senior Planner

SUBJECT: #501-94(2) ROBERT E. DUNN & SEANA R. GAHERIN TRUSTEES of D&G REALTY TRUST petition to amend SPECIAL PERMIT/SITE PLAN APPROVAL/Extension of a nonconforming structure #501-94, to expand an existing restaurant and to increase the seating capacity from 49 to 69 seats; to waive the required six additional parking spaces and to locate one handicapped parking space in one of the existing standard 10 parking spaces and allow an impervious surface on the off-site parking area at 342-344 ELLIOT STREET, Ward 5, NEWTON UPPER FALLS on land known as Section 51, Block 41, Lot s 10 & 12, containing approximately 6,725 square feet of land in a district zoned BUSINESS 1.

CC: Mayor David B. Cohen

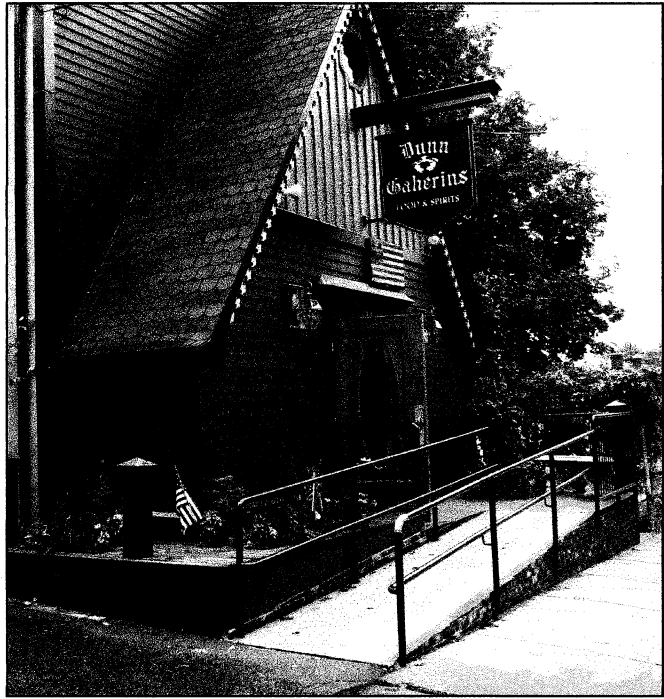
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The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the Board of Aldermen will want to consider in its discussion at a subsequent Working Session.

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## EXECUTIVE SUMMARY

The petitioner, Dunn Gaherin's, is an Irish Pub/Restaurant located at 342-346 Elliot Street in the Newton Upper Falls Historic District. The lot consists of a 6,725 sq.ft. parcel currently improved with a 2½-story "Swiss Chalet" style building circa the 1850s and an unstriped parking facility. The building is legally nonconforming with respect to front and side setbacks. The parking facility was built pursuant to Special Permit #501-94 (**ATTACHMENTS "A & B"**) and is legally nonconforming, although there have been improvements made to the lot since then without the benefit of permits (the lot was approved as an unstriped gravel parking area and is now asphalt). The petitioners are now seeking to increase the number of allowed seats from 49 to 69 and to expand the structure with a 237 square foot one-story addition to the rear of the building. The proposed additional seats necessitate a parking waiver of six (6) stalls to accommodate the proposed number of seats.



The petitioners are also proposing to locate one handicap stall in one of the existing standard parking spaces and to retroactively seek approval for the paving of the parking area.

The addition to the footprint is part of a proposed interior remodel to upgrade the existing facilities and to improve circulation within the restaurant. Although the restaurant is currently licensed for only 49 seats, according to the petitioners there are accommodations for up to 69 seats depending on how many sit in a booth. The City's Zoning Ordinance allows restaurants having not more than 50 seats by-right in a Business 1 District, but requires a special permit in that district for restaurants with more than 50 seats. The petitioners are now proposing to legalize the 69 seats by special permit and to amend Conditions #1, 3, & 7 of Board Order #501-94.

The existing business serves as an example of a neighborhood business that contributes to the vitality of the Upper Falls neighborhood, consistent with the *Newton Comprehensive Plan*, adopted November 19, 2007. However, it is important that the right balance be struck in the number of seats allowed so as not to excessively burden the surrounding residential areas.

***The Planning Department believes reliance on available on-street parking is problematic from a public safety standpoint (as Elliot Street has a steep slope in this area) and from a neighborhood impact standpoint, and has concerns that the proposed addition will be built within the existing turnaround area, impacting maneuverability on an already tight site.***

## I. SIGNIFICANT ISSUES FOR CONSIDERATION

In reviewing this petition the Board should consider whether:

- ◆ the proposed expansion of a nonconforming structure would be substantially more detrimental to the neighborhood than the existing nonconforming structure;
- ◆ the proposed expansion of the use from 49 seats to 69 seats would be substantially more detrimental to the neighborhood than the existing use;
- ◆ compliance with the parking requirements is practical or necessary;
- ◆ the proposed waiver of six parking stalls is appropriate due to the location of the site and the availability of on street parking; and
- ◆ the proposed parking layout is convenient and safe for vehicular and pedestrian movement.

## II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

### A. Neighborhood and Zoning

The site is located on the south site of Elliot Street, in a commercial block of Newton Upper Falls. The property is located in a Business 1 District within the Newton Upper Falls Historic District. Chestnut Street is the nearest cross street to the west with a number of smaller residential streets surrounding it. The Echo Bridge Restaurant to the west has its own private parking lot just west of the subject property. The Echo Bridge Mall across Chestnut Street on the corner of Elliot is the nearest commercial shopping area and provides some parking for the petitioners' customers and staff, although there is no formal arrangement to allow for this.

Elliot Street has a considerable slope heading downward in front of the petitioners' parcel towards the Charles River and contains both residential and commercial uses. The petitioners' parcel is bordered to the east by a mixed-use property at 336 Elliot Street, which contains a spa with residential use above which received a special permit under BO #222-01. Residential properties consisting of single- and two-family residences face the restaurant on the other side of Elliot Street. Parking is restricted to one hour on the south side of Elliot Street in the vicinity of the restaurant. Hale Street to the east also contains a mix of single- and two-family residences.

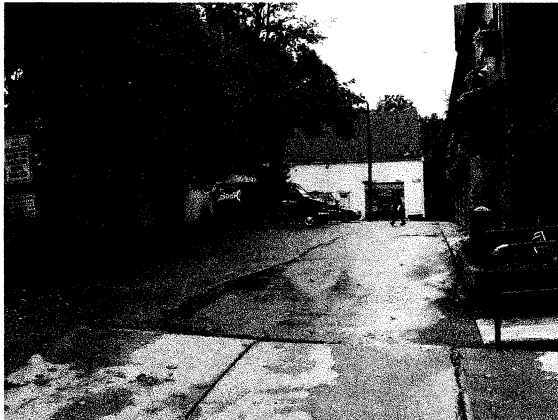
### B. Site

The site is 6,725 sq. ft. in area and includes a 2½-story, wood and stucco building which houses the restaurant, and the adjacent unstriped parking area. The parcel is long, flat and generally rectangular in shape though there is a jog in the rear property line. The parcel actually consists of two separate lots connected by a ten-foot wide passageway. The parcels were combined in 1995 and an existing building was demolished to make way for the parking lot. The ten-foot wide passageway appears to grant access to a landlocked parcel immediately to the rear of the subject property, which is improved with a barn-style garage. This appears to be the only

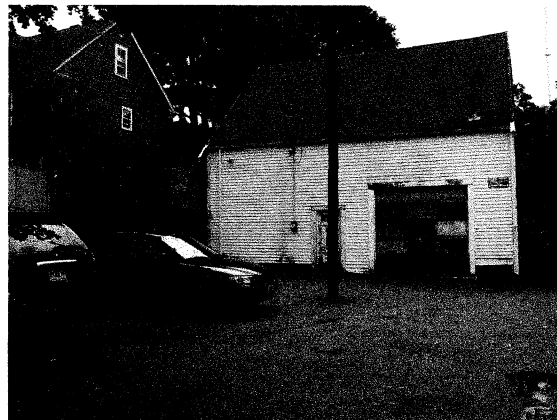
access to this landlocked parcel.

There is one main entrance to the restaurant, accessible by ramp from the sidewalk off Elliot Street. There is a narrow sidewalk along the length of the restaurant buffering it from the parking area. Access to the site occurs only from Elliot Street. The parking area is paved but not striped and there is no parking demarcated for the handicapped. A six-foot high, scalloped stockade fence screens the parking area from the adjoining mixed-use property at 336 Elliot Street. There is a dumpster located at the rear of the site serving Dunn Gaherin's. The existing parking facility is narrow at approximately 33 feet in width, making maneuvering tight when cars are parked in the lot.

The rear property line is not demarcated and paving runs an additional twenty feet onto the adjacent landlocked parcel. The only delineation between the two lots is a utility pole on the abutting parcel to the rear, which gives the appearance of being in the middle of the parking area due to surrounding paving. Although not owned by the petitioners, the petitioners have acknowledged that customers and staff sometimes park beyond the utility pole on the abutter's lot.



Existing Parking  
Area



Rear abutter's garage  
and utility pole

### III. PROJECT DESCRIPTION AND ANALYSIS

#### A. Land Use

Dunn-Gaherin's, the current pub/restaurant use, has operated at the site since 1991. All of the seating occurs on the first floor, and the second floor of the building is used for storage. Restaurants having not more than 50 seats and not open between the hours of 11:30 p.m. and 6:00 a.m. are allowed by-right in the Business 1 District; however, *the petitioners are seeking to operate with 69 seats which requires a*

***special permit.*** Although the petitioners have stated they have had 69 seats for a number of years this is (would have been) in violation of the City's Zoning Ordinance and the existing special permit (Board Order #501-94). The petitioners are now seeking to legalize the additional 20 seats through the special permit process.

The restaurant is open six days a week (closed on Sundays) from 11:00 a.m. to 12:00 a.m. Busiest times of operation include Thursday and Friday lunch and Thursday, Friday and Saturday evenings. At capacity, both the restaurant and bar can accommodate up to 69 patrons. There are a maximum of 11 employees on-site during the largest shift.

B. Building and Site Design

Currently the restaurant has 25 seats in the bar area and 44 seats in the dining room for a total of 69 seats, with the bathrooms in between the bar and dining area. The petitioners propose to open up the bar and dining areas by shifting eight seats from the dining area towards the bar area for a total of 29 dining and bar seats in the front portion of the restaurant and the remainder 40 seats in the rear dining area, maintaining 69 seats. The kitchen is proposed to be expanded slightly to allow for separation in the bussing, food pickup and washing area from the cooking area.

The new addition would be a single-story structure and would house three new bathrooms including a separate handicap accessible bathroom, replacing the existing bathrooms currently located between the bar and dining area. Plans also call for opening up small portions of the first floor ceiling exposing old beams and existing windows on the second floor so they are visible from below. ***The petitioners are not proposing to expand the use of the second floor in any way.***

The proposed addition would be stucco finished to match the existing building with a flat rubber roof. Two condensing units for a new HVAC system would be located on the flat roof of the addition and are proposed to be screened with a four-foot parapet wall. Four new windows will be added to the east elevation first floor, letting additional light into the dining area. An additional handicap accessible entrance would be added at the new rear addition close to the proposed handicap-parking stall.

C. Parking and Circulation

The petitioners are not proposing any changes to the parking area except to stripe the parking area (*formerly unstriped gravel parking area which is now asphalt*) with ten parking stalls, including one handicap stall. Each stall would be 9.5 feet in width and 16 feet in length with a two-foot bumper overhang. The handicap stall would be 12' x 16' with a two-foot overhang. All of the stalls will be perpendicular to the side lot lint. None of these stalls or the maneuvering aisle meets the dimensional requirements; however, Condition #10 of the 1995 Board Order waived these dimensional and design requirements with the exception of the handicap stall.

The 1995 Board Order approved a parking facility for ten parking stalls even though the required number of spaces would have been 21 stalls ( $49/3 + 11/3 = 21$ ), and in effect ***granted an 11-stall parking waiver***. The proposed expanded use to 69 seats requires an additional six parking stalls, as the number of employees on the largest shift remains the same ( $69/3 + 11/3 = 27$ ). Since the petitioners are not proposing any additional parking, they are seeking an additional parking waiver for these six stalls, bringing their ***total parking waiver to 17 stalls***.

In order to meet the additional parking requirement Dunn Gaherin's is proposing an on-site parking manager to direct and expedite parking of customer cars in the ten spaces on-site during the peak evening hours of 6:00-8:00 p.m. on Thursdays, Fridays and Saturdays. The petitioners have also proposed to park all staff off-site in a nearby parking area. Finally, the petitioners are proposing to rely on street parking to meet the additional parking needs of its customers.

The petitioners have submitted a parking study that surveyed parking usage in the neighborhood during lunch and dinner hours and the amount of on street parking on surrounding streets. The report notes that the south side of Elliot Street allows one-hour parking from Chestnut Street to High Street and has capacity for approximately 25 cars. Hale Street, which is residential, allows parking on the northerly side with an approximate capacity for 14 spaces and has additional capacity for approximately 16 cars on the southerly side. Open non-restricted parking is allowed on Chestnut Street on both sides of the street.

Although the Planning Department supports the concept of "managed" parking during peak evening hours, additional information about implementation is needed such as how visible the attendant would be, if there would be a backup attendant, and where cars would park once the lot was full. Additionally no information has been submitted regarding any agreement for off-site parking of employees.

The Planning Department believes that reliance on available on street parking is problematic from a public safety standpoint (Elliot Street has a steep slope in this area) and from a neighborhood impact standpoint. In addition, the proposed addition is proposed to be built within the existing turnaround area, greatly impacting maneuverability on an already tight site.

The petitioners are proposing a bike rack at the rear of their parking lot. As there is no demarcation between the Dunn Gaherin's parking lot and the rear abutter's lot, the Planning Department is concerned that cars using the area for maneuvering room may back into the bike rack and suggests the petitioners seek alternative locations. The Planning Department also suggests the petitioners demarcate the rear property line in some way so that customers and staff do not park on the

abutting parcel or formalize an arrangement with the adjacent property owners to allow more active use of this area.

D. Landscape Screening, Lighting, and Signage

The site as developed has little space for landscaping. Window box planters line the building's north and east façades and plans for the addition call for a parapet planter with trailing vines. A three-foot mulch bed between the parking area and the existing stockade fence contains three flowering pear trees and some low lighting. It appears there is room for two additional shade tolerant trees along this lot line to offer better screening to the easterly abutter. Additional screening along Elliot Street in front of the parking area would be a benefit to the neighborhood. The petitioners are proposing to screen the dumpster; however, details have not been provided.

IV. COMPREHENSIVE PLAN

The existing business serves as an example of a neighborhood business that contributes to the vitality of the village of Upper Falls, consistent with the *Newton Comprehensive Plan*, adopted by the Board of Aldermen on November 19, 2007. However, it is important that the right balance be struck in the number of seats allowed so as not to excessively overburden the surrounding residential areas. As the existing use has effectively operated with the proposed number of seats for a number of years the proposed number of seats may maintain that balance if parking is managed properly during peak hours and the petitioners are able to secure off-site parking for employees.

V. TECHNICAL REVIEW

- A. Technical Considerations (Section 30-15). The existing building/lot is nonconforming with respect to lot area, front and side setbacks. The proposed addition does not further encroach into either of these setbacks; however, the petitioners need to seek a special permit to extend an already nonconforming structure.
- B. Parking Requirements (Section 30-19). The existing parking area does not comply with the depth of the required minimum 19 feet, even with the allowed two-foot overhang. Additionally, the width of the driveway is less than the minimum 20 feet required for two-way traffic; however, Condition #10 of Board Order #501-94 waived these dimensional and design requirements. As stated earlier the applicant is also seeking an additional six-stall parking waiver in order to accommodate the additional 20 seats requested.
- C. Other Reviews
1. Engineering. The Associate City Engineer has reviewed the subject petition (**ATTACHMENT "C"**). As the proposed addition will be constructed over an existing impervious area and the footprint is below the threshold requirement for on-site drainage containment, no further drainage improvements are

required. The Associate City Engineer notes that even though it is on the rear abutters property, it would be advantageous to remove the existing utility pole that services the garage on the neighboring lot and provide an underground electric/telephone service feed to the structure. As the wires cross the petitioners' property it would be a public benefit as well as ease maneuverability and snow removal for the petitioners. Additionally, if there are any on-site catch basins, they should be retrofitted with gas trap outlets.

2. Fire Department. Assistant Fire Chief Proia reviewed site plans (*ATTACHMENT "D"*) and has approved the site layout for accessibility and water supply.
3. Newton Upper Falls Historic District Commission. The property is located within the Newton Upper Falls Historic District. The petitioners appeared before the Commission in July 2008 and received approval for proposed plans (*ATTACHMENT "E"*).

#### VI. ZONING RELIEFS SOUGHT

Based on the completed zoning review, dated July 31, 2008 (*ATTACHMENT "F"*), the petitioners are seeking approval through or relief from:

- Section 30-11(d)(9) for a special permit for a restaurant with more than 50 seats in a Business 1 District, and to amend Condition #7 of Board Order #501-94 to allow for an additional 20 seats bringing the total capacity up to 69 seats
- Section 30-19(c)(2)a) to allow for exceptions to the parking ordinance to allow for the waiver of 6 additional parking stalls in conjunction with the proposed expansion of restaurant seating
- Section 39-19(h)(2)c) to amend Condition #1 of Board Order #501-94 to allow one handicapped parking stall to be substituted for one of the existing standard 10 spaces
- Section 30-19(j)(2)b) to amend condition #3 of Board Order #501-94 to allow for an impervious surface on the parking area
- Section 30-21(b) to allow for the expansion of a nonconforming structure
- Section 30-23 for Site Plan Approval
- Section 30-24 for approval of Special Permits

#### VII. Summary of Petitioners' Responsibilities

At the October 14 public hearing, the petitioners should be expected to respond to all issues raised in this memorandum prepared by the Planning and Development Department. Prior to working session, the petitioner should provide:

- a parking management plan with details of the managed parking operation and arrangements for off-site parking
- dumpster details
- alternative bike rack location(s)
- supplemental landscape plantings

**ATTACHMENTS:**

**ATTACHMENT A: BOARD ORDER #501-94, DATED FEBRUARY 6, 1995**  
**ATTACHMENT B: APPROVED SITE PLAN FROM BOARD ORDER #501-94**  
**ATTACHMENT C: ENGINEERING REVIEW**  
**ATTACHMENT D: FIRE DEPARTMENT REVIEW**  
**ATTACHMENT E: HISTORIC DISTRICT RECORD OF ACTION**  
**ATTACHMENT F: ZONING REVIEW**  
**ATTACHMENT G: LAND USE MAP**  
**ATTACHMENT H: ZONING MAP**

BK 25221 388

D5

#501-94

**CITY OF NEWTON**  
**IN BOARD OF ALDERMEN**

February 6, 1995

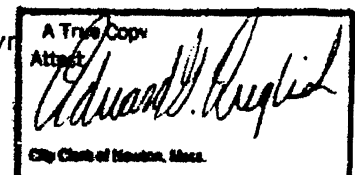
**ORDERED:**

That the Board, finding that the public convenience and welfare will be substantially served by its action and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, the following SPECIAL PERMIT/SITE PLAN APPROVAL is hereby granted, in accordance with the recommendation of the Land Use Committee and the reasons given by the Committee therefore, through its Chairman, Alderman Susan M. Basham:

1. The Board finds that the petitioners have operated this site as a restaurant conforming to all laws and ordinances and have eliminated the previous use (bar) which caused noise at late hours, vandalism to public and private property and rowdy customers.
2. The Board finds that by providing valet parking and assisting customers to park their cars and holding on to the keys, the petitioner are able to control parking and are better able to prevent drunk driving.
3. The Board finds that by providing convenient off-street parking the petitioner will keep cars off residential streets and are better able to serve their customers and, by doing so will allow their business to continue to be part of the Upper Falls neighborhood.
4. The Board finds that overall safety and site improvements, particularly the landscaping, will enhance the neighborhood.
5. The Board finds that the Petitioners will further enhance the neighborhood by improving the east facade of the building.
6. The Board finds that the Petitioners have submitted a valet parking management plan (1/31/95) to the Department of Planning and Development which will enable maximum safe use of the parking area.

PETITION NUMBER: 501-94

PETITIONER: Robert Dunn &amp; Seana Gaherin/Robert Heyn



11.00  
129  
MSD 03/14/95 09:56:04

**LOCATION:** 342 Elliot Street, Section 51, Block 41, Lot 12, containing approximately 2,400 sq. ft. of land.

**OWNER:** Robert Heyn *BOOK 16358, PAGE 108*

**ADDRESS OF OWNER:** 117 Crescent Street  
Newton, MA 02166

**TO BE USED FOR:** Accessory parking

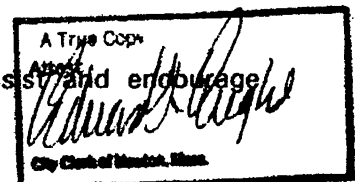
**CONSTRUCTION:** None

**EXPLANATORY NOTE:** Sections 30-19(m) and 30-19(h)(5)(b) allow the Board of Aldermen to grant a Special Permit to waive strict adherence to the dimensional and design requirements for parking facilities; specifically, but not limited to, a gravel unstriped parking area in excess of five spaces with no subsurface drainage.

Land referred to is in a Business 1 District.

Approved, subject to the following conditions:

1. That for the purpose of showing potential parking space layouts for both four vehicles and ten vehicles, plans entitled "Site Plan of Land, Newton, Mass. to Accompany the Petition of Robert Dunn & Seana Gaherin - 342 & 344 Elliot Street", dated December 12, 1994 and revised January 6, 1995, showing four parking spaces and "Site Plan of Land in Newton, Mass to Accompany the Petition of Robert Dunn & Seana Gaherin 342 & 344 Elliot Street", dated December 12, 1994 and revised January 6, 1995, showing parking spaces have been submitted. and for purposes of showing landscaping only, a "Site Plan of Land, Newton Mass." dated December 12, 1994 and revised through January 31, 1995 shall be followed.
2. That the drainage system shown on all plans shall not be required to be installed.
3. That the requirement to have an impervious striped parking surface shall not be required and a gravel surface shall be installed.
4. That in order to implement the four-parking-space plan vehicles may be parked to the west of the location shown on the plan cited in Condition #1, solely to accommodate the installation of the landscaping.
5. That the petitioner shall continue use best efforts to assist and encourage



restaurant customers to comply with all parking and other traffic safety regulations, especially on Elliot Street and Hale Street, and not to obstruct driveways.

6. That all deliveries to the restaurant occur from the parking area and at off-peak hours during the day.

7. That the addition of the parking area shall not allow additional seating in the restaurant.

8. That, after consultation with interested Aldermen, the Petitioners shall submit a plan for low level and low intensity lighting and proposed lighting fixtures to the Director of Planning and Development for review and approval.

9. That the Petitioners shall utilize a managed parking plan when the facility is to be utilized in conformity with the ten space parking plan referenced in Condition #1 above.

10. That, to the extent necessary to implement the parking layout shown on plans cited in Condition #1 above, all other dimensional and design requirements of Section 30-19 not specifically referred herein are hereby waived.

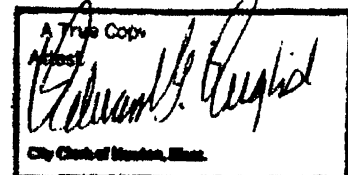
11. That, after consultation with the Department of Planning and Development as to location, the Petitioner shall install a bike rack in a suitable location on the site or on the adjacent restaurant site.

12. That no building permit shall be issued in pursuance of the SPECIAL PERMIT/SITE PLAN APPROVAL and STRUCTURE until:

a. That the City Engineer has reviewed and approved site grading and a statement by the City Engineer certifying such approval shall have been filed with the City Clerk, the Commissioner of Inspectional Services, and the Director of Planning and Development.

b. The Director of Planning and Development has reviewed and approved a plan for low level and low intensity lighting and has sent a letter certifying approval of such plan to the Commissioner of Inspectional Services.

c. The petitioner shall have recorded with the Registry of Deeds for the Southern District of Middlesex County a Certified copy of this Board Order granting this SPECIAL PERMIT/SITE PLAN APPROVAL with appropriate reference to the book and page of the recording of the Petitioner's title deed or notice of lease thereon



d. A certified copy of such recorded notice shall have been filed with the City Clerk, the Inspectional Services Department and the Department of Planning and Development.

13. That the parking lot subject to this SPECIAL PERMIT/SITE PLAN APPROVAL shall not be occupied until:

a. There shall have been filed with the City Clerk, the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that the finished grades of the driveways and parking area have been constructed to standards of the City of Newton Engineering Department.

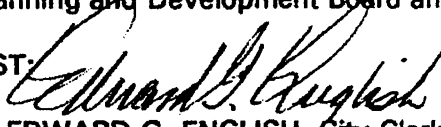
b. There shall have been filed with the City Clerk and the Department of Inspectional Services a statement by the Director of Planning and Development approving final location, number and type of plant materials, final landscape features, parking areas, and lighting installation.

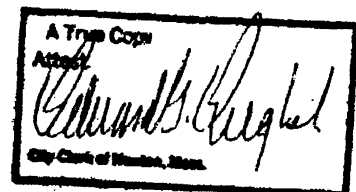
c. Notwithstanding the provisions of Section 13b, hereof, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy of all or portions of the buildings prior to installation of final landscaping provided that the Petitioner shall first have filed with the Director of Planning and Development a bond, letter of credit, cash or other security in the form satisfactory to the Director of Planning and Development in an amount not less than 135% of the value of the aforementioned remaining landscaping to secure installation of such landscaping.

Under Suspension of Rules  
Readings Waived and Approved  
23 yeas 0 nays 1 vacancy

The undersigned hereby certifies that the foregoing copy of the decision of the Board of Aldermen granting a SPECIAL PERMIT and SITE PLAN APPROVAL and is a true accurate copy of said decision, the original of which having been filed with the CITY CLERK on February 6, 1995. The undersigned further certifies that all statutory requirements for the issuance of such SPECIAL PERMIT/SITE PLAN APPROVAL have been complied with and that all plans referred to in the decision have been filed with the Planning and Development Board and the City Clerk.


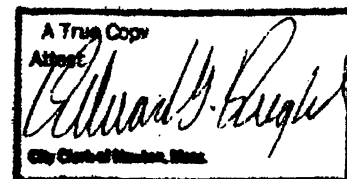
ATTEST:

  
(SGD) EDWARD G. ENGLISH, City Clerk  
Clerk of the Board of Aldermen



I, Edward G. English, as the Clerk of the Board of Aldermen and keeper of its records and as the City Clerk and official keeper of the records of the CITY OF NEWTON, hereby certify that Twenty days have elapsed since the filing of the foregoing decision of the Board of Aldermen in the Office of the City Clerk on February 6, 1995 and that NO APPEAL to said decision pursuant to M.G.Laws Chapter 40, Section 17 has been filed thereto.

ATTEST

  
EDWARD G. ENGLISH, City Clerk

1995 Plan

LOT 13

LOT 11

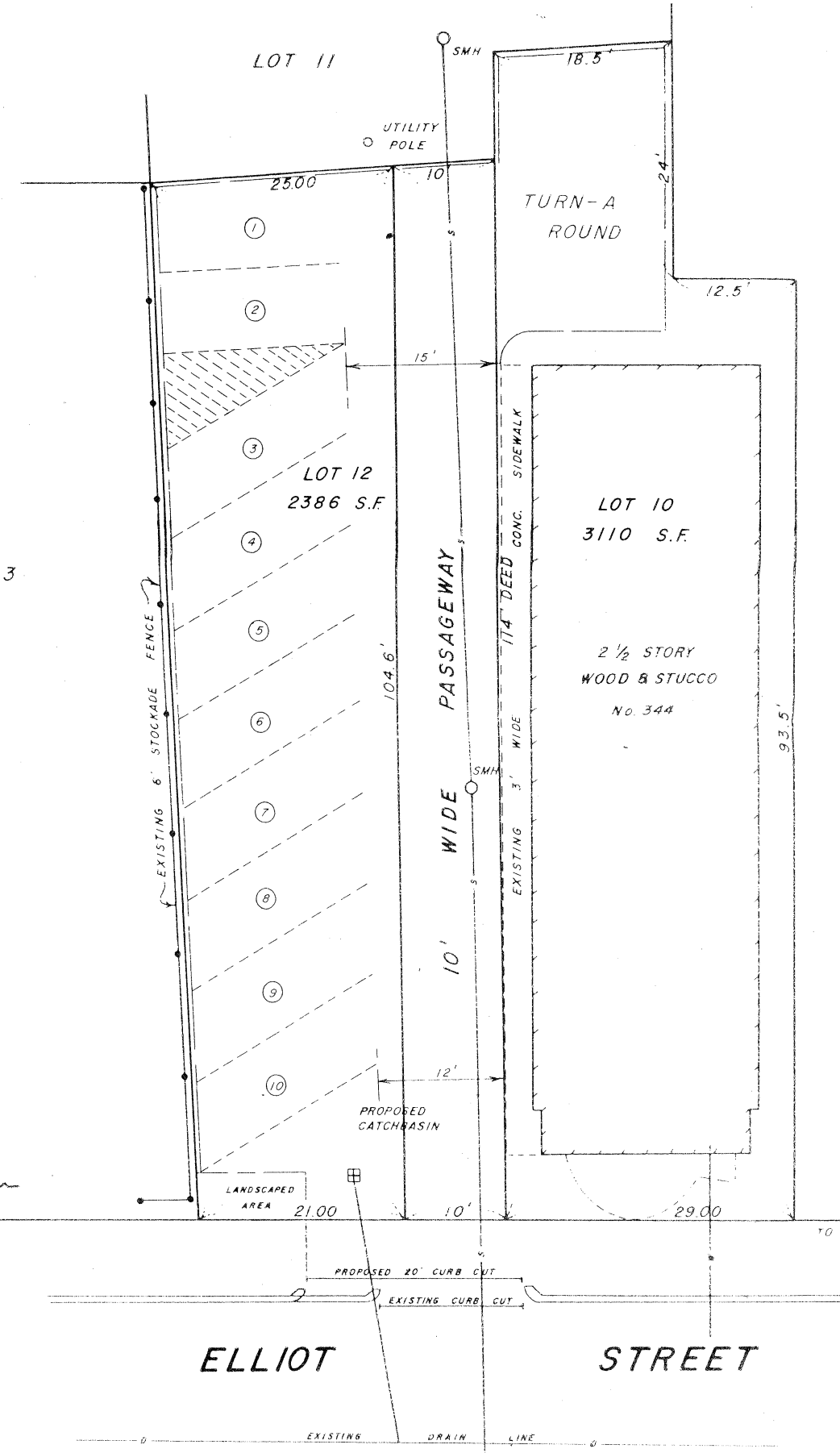
LOT 12  
2386 S.F.

LOT 10  
3110 S.F.

2 1/2 STORY  
WOOD & STUCCO  
NO. 344

ELLIOT

STREET



CITY OF NEWTON  
ENGINEERING DIVISION

MEMORANDUM

To: Alderman George Mansfield, Land Use Committee Chairman

From: John Daghlion, Associate City Engineer

Re: Special Permit – 344 Elliot Street

Date: August 28, 2008

CC: Lou Taverna, PE City Engineer (via email)  
Candice Havens, Chief Planner (via email)  
Linda Finucane, Associate City Clerk (via email)  
Alexandra Ananth, Planner (via email)

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In reference to the above site, I have the following comments for a plan entitled:

*344 Elliot Street  
Newton, MA  
Prepared by: Verne T. Porter, JR., PLS  
Dated: May 19, 2008  
Revised: 7-24-'08*

Drainage:

1. The proposed addition will be constructed over an existing impervious area (concrete & asphalt), and the footprint is below the threshold requirement for on site drainage containment, therefore no drainage improvements are warranted.

Site Maneuvering:

- As a recommendation to help facilitate on site vehicle movement, it would be advantageous to remove the existing utility pole that services the garage on the neighboring lot labeled #11, and provide an underground electric/telephone service to the structure.

If you have any questions or concerns please feel free to contact me @ 617-796-1023.



**CITY OF NEWTON, MASSACHUSETTS**  
**FIRE DEPARTMENT HEADQUARTER**

1164 Centre Street, Newton Center, MA 02459-1584  
Chief: (617) 796-2210 Fire Prevention: (617) 796-2230  
FAX: (617) 796-2211 EMERGENCY: 911

**ATTACHMENT D**



David B. Cohen  
Mayor

Joseph E. LaCroix  
Chief

Alderman George Mansfield  
Land Use Committee  
Newton City Hall  
1000 Commonwealth Avenue  
Newton Centre, Ma 02459

September 26, 2008

Re: Dunn Gaherins

Dear Mr. Mansfield,

We have reviewed the plans for the proposed addition to the Dunn Gaherins restaurant. The occupancy load, as I understand it, will not change and will remain below 100. The addition is below the 7,500 square foot requirement for a sprinkler system and fire department accessibility will remain from Elliot Street. This is to advise you that the Newton Fire Department approves the site layout for accessibility and water.

We will of course be reviewing the plans relative to Fire Prevention matters during the building permit process.

Sincerely,

Bruce A. Proia  
Assistant Chief of Operations

Cc: Deputy Chief Mike Castro, Fire Prevention  
Alexandra Annath, Planning and Development



## CITY OF NEWTON, MAS

ATTACHMENT E

Department of Planning and Development  
Michael J. Kruse, Director

David B. Cohen  
Mayor

Telef  
(617) 796

### RECORD OF ACTION

**DATE:** July 17, 2008

**SUBJECT:** 344-346 Elliot – Certificate of Appropriateness

At the regularly scheduled meeting and public hearing on July 10, 2008, the Newton Upper Falls Historic District Commission, by a vote of 7-0,

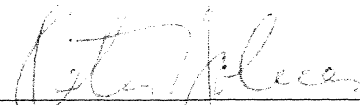
RESOLVED to approve a Certificate of Appropriateness for the following work:

1. Remove two (2) chimneys;
2. Remove four (4) exterior doors;
3. Remove three (3) windows;
4. Remove four (4) through wall air conditioner sleeves;
5. Remove approximately 250 s.f. stucco wall surface and 50 s.f. of exterior wall
6. Construct new 237 s.f. single-story addition with dormer above and change one window to door for roof access at rear of building as indicated on plans.
7. Remove small section of asphalt, regrade at 6" and install new concrete paving at new

HC entrance at rear.

All above work generally toward the rear of the building and as indicated on architect's plans.

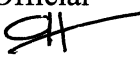
Voting in the Affirmative: Larry Schwirian, Chairman; Jeff Riklin, Seta Der  
Hohannesian, Don Tellalian, Paul Snyder, Laurie Malcom,  
Jon Sales

  
Katy Holmes, Recording Secretary

## Zoning Review Memorandum

Dt: July 31, 2008

To: John Lojek, Commissioner of Inspectional Services

Fr: Eve Tapper, Chief Zoning Code Official  
Candace Havens, Chief Planner 

Cc: Michael Kruse, Director, Department of Planning and Development  
Stephen Buchbinder, Esq., representing Dunn Gahein's, Inc.  
Ouida Young, Associate City Solicitor

**RE: Request for extension of nonconforming structure and restaurant with over 50 seats.**

Applicant: Dunn Gahein's, Inc.	
<b>Site:</b> 342 and 344 Elliot Street <b>Zoning:</b> Business 1 <b>Current use:</b> restaurant	<b>SBL:</b> Section 51, Block 41, Lots 10 and 12 <b>Lot Area:</b> 6725 sq. ft. <b>Prop. use:</b> restaurant with 69 seats

### **Background:**

The subject property is located in a Business 1 zone and consists of a 6,725 square foot lot currently improved with a restaurant and a ten-stall parking facility. The parking facility was built pursuant to an approved Special Permit (BO #501-94), dated February 6, 1995 in April 1995, two adjacent lots were merged to accommodate installation of parking next to the restaurant. The applicant is requesting permission to add a 237 square feet of floor area to the existing nonconforming building as part of an interior remodel that improves internal circulation and to increase the number of seats allowed in the restaurant from 49 to 69. According to the petitioners' application, the restaurant currently operates with 69 seats. This situation appears to be in violation of the Zoning Ordinance that allows restaurants with less than 50 seats by-right in the Business 1 zone, but requires a Special Permit in that zone for restaurants with more than 50 seats. Although the Planning Department file includes an application dated August 1998 for a Special Permit to allow 59 seats on the property, there is no further information about this particular application and no Board Order approving such a Special Permit in the file.

### **Administrative determinations:**

1. The subject site is comprised of a lot created on April 6, 1995 and is subject to dimensional controls applicable to lots in the Business 1 zone. The following review is based on the materials and plans received to date as referenced under Plans and Materials Reviewed, below.
2. The following table sets forth the applicable dimensional controls for businesses located in the Business 1 zone:

<b>Business 1</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>
Lot Area	10,000 sq. ft.	6,725 sq. ft.	6,725 sq. ft.
Setbacks			
Front	Avg./ 10 ft. <sup>1</sup>	7.3 ft.	7.3 ft.
Side	½ building height <sup>2</sup>	3.1 ft.	3.1 ft.
Rear	0 ft.	8.3 ft.	0.5 ft.

3. The existing building is nonconforming with respect to minimum lot size, the westerly side setback and the front setback. The current application will not increase this nonconformity. In order to add to the structure, the applicant must apply for a special permit pursuant to §30-21(b).
4. A restaurant with less than 50 seats is allowed in the Business 1 zone as of right. However, the applicants have admitted in their application that the restaurant currently operates with 69 seats without the required special permit. They have submitted floor plans confirming this situation. The applicants are now proposing to legally increase the capacity to 69 seats, which is allowed in the Business 1 zone only with a special permit pursuant to §30-11(d)(9). Also, Condition #7 of the 1995 Board Order states “that the addition of the parking area shall not allow additional seating in the restaurant.” This condition must be amended to legitimize more seating.
5. Section 30-19 outlines parking and loading facility requirements. The existing parking lot does not comply with these standards with respect to 1) the depth of parking stalls per §30-19(h)(2)b) because all are less than the required minimum of 19 feet; and 2) the width of the driveway per §30-19(h)(4)a) because it is less than the minimum 20 feet required for two-way traffic. However, Condition #10 of the 1995 Board Order approving a Special Permit for the subject property waived these dimensional and design requirements.
6. The 1995 Board Order approved a parking facility for ten (10) parking spaces even though the required number of spaces at the time for the existing restaurant would have been 21 (49 seats/3+ 11 employees/ 3 or 17+4 = 21). The Board Order does not address this issue specifically, but does grant a waiver per §30-19(m) that could have included it in general. Assuming the rest of the spaces were grandfathered at the time, then per §30-19(c)(2)a) the expanded use from 49 to 69 seats requires only an additional six (6) parking spaces, since the applicant has stated that the number of employees on the largest shift will remain the same (69 seats/3 = 23+4 = 27). The existing parking lot cannot be expanded to accommodate additional spaces. Therefore, the applicant must apply for a waiver of the parking requirement under §30-19(m).
7. Sections 30-19(j)(2)b) and d) describe the requirements for surfacing and drainage for a parking facility with more than five stalls. Conditions #2 and #3 of the 1995 Board Order waived the requirement that a drainage system be built and allowed the surface of the parking lot to be gravel rather than an impervious surface. The current application requests that Condition #3 of the 1995 Board Order be amended to allow an impervious surface on the on-site parking facility. The current application does not request that Condition #2, which allows the parking lot to be built without the installation of a drainage system, be amended. However, Condition #2 should be reviewed by the City’s Engineering Department if the parking lot is changed from a pervious surface to an impervious one to assure adequate on-site drainage.

<sup>1</sup> Building setback on one side is 10 feet and there is a vacant lot on the other side. Therefore, a 10-ft. setback is required.

<sup>2</sup> No building height is provided, thus no setback can be identified; petitioner should also provide this for reference.

8. The applicant has also requested amendments to the 1995 Board Order to permit a handicapped parking stall to be substituted for one of the existing ten (10) stalls per Condition #1. This request is consistent with the Zoning Ordinance. Section 30-19(h)(2)c) requires one handicapped parking space for a facility with ten spaces.
9. The following table outlines the zoning relief required for the project:

<b>Zoning Relief Summary</b>		
<b>Ordinance</b>		<b>Action Required</b>
	<b>Non-Conforming Structure</b>	
30-21(b)	Special Permit for the expansion of a nonconforming structure.	X
	<b>Use</b>	
30-11(d)(9)	Special Permit for a restaurant with more than 50 seats in a Business 1 zone. Amendment to Condition #7 of Board Order #501-94 to allow more seating.	X
	<b>Parking</b>	
30-19(c)(2)a), 30-19(m)	Waiver from parking requirement to add six (6) additional on-site parking spaces in conjunction with expansion of restaurant seating from 49 seats to 69 seats.	X
30-19(j)(2)b)	Amendment to Condition #3 of Board Order #501-94 to allow for an impervious surface on the parking lot.	X
30-19(h)(2)c)	Amendment to Condition #1 of Board Order #501-94 to allow one handicapped parking space to be substituted for one of the existing standard ten (10) spaces.	X
	<b>Site</b>	
30-23	Site plan approval	X
	<b>Special Permit</b>	
30-24	Special permit approval	X

Plans and materials reviewed:

- Letter from Stephen Buchbinder, Esq. to Candace Havens, Chief Planner, dated June 26, 2008
- Board Order #501-94 for Special Permit/Site Plan Approval for a parking facility on 342 Elliot Street, dated February 6, 1995
- Parking Calculation for Dunn Gahein's, Inc.
- Plan of Land for 342 & 344 Elliot Street, with stamp and signature of Verne T. Porter, Jr. P.L.S, dated April 6, 1995
- Deeds for 342 and 344 Elliot Street recorded in Book 2556, Page 318 and Book 2828, Page 511, respectively
- Draft Special Permit application

Dunn Gahein's, Alterations and Additions, 344 Elliot Street, Newton, MA 02464 all bearing the stamp and signature of Registered Architect Donald Lang and all dated 6/20/08:

- Sheet EX-1 – "Existing Basement & First Floor Plans"
- Sheet EX-2 – "Existing Second Floor Plan, Existing North & South Elevations"
- Sheet EX-3 – "Existing East and West Elevations"
- Sheet A-1 – "Proposed Basement Floor Plan"
- Sheet A-2 – "Proposed First and Second Floor Plan"

- Sheet A-3 – “Proposed North and South Elevations”
- Sheet A-4 – “Proposed East and West Elevations”

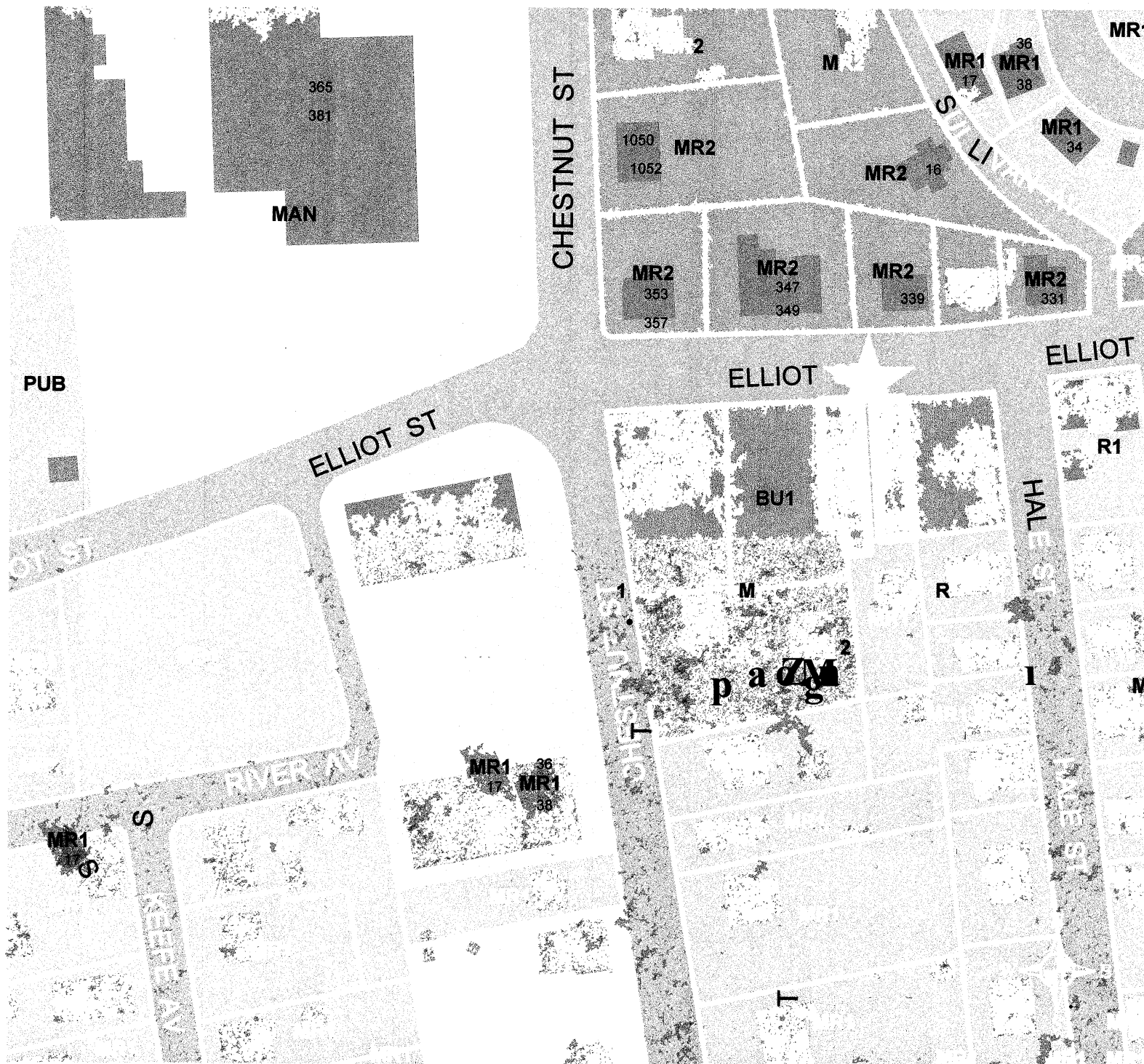
344 Elliot Street, Newton, Massachusetts all bearing the stamp and signature of Verne T. Porter, Jr. P.L.S. and dated as noted:

- Sheet 1 of 5 – “Proposed Addition Plan – Existing Parking,” dated May 19, 2008
- Sheet 2 of 5 – “Existing Parking and Building Location,” dated March 4, 2008
- Sheet 3 of 5 – “Area Plan”, dated March 4, 2008
- Sheet 4 of 5 – “Area Plan”, dated March 4, 2008
- Sheet 5 of 5 – “Zoning District Plan”, dated March 4, 2008
- “Plot Plan of Existing Parking, Elliot St., Chestnut St., and Hale Street” bearing the stamp and signature of Verne T. Porter, Jr., dated June 10, 2008



# Zoning Map

342-344 Elliot St.



## Legend

- 342-344 Elliot St
- House Numbers
- Building Footprints
- Single Res. 1
- Single Res. 2
- Single Res. 3
- Business 1
- Business 2
- Multi-Res. 1
- Multi-Res. 2
- Multi-Res. 3
- Multi-Res. 4
- Mixed Use 1
- Mixed Use 2
- OS/Rec.